

SENATE BILL REPORT

SB 6382

As of February 4, 2008

Title: An act relating to modifying provisions relating to consumer protection act violations.

Brief Description: Modifying provisions relating to consumer protection act violations.

Sponsors: Senators Weinstein, Kauffman, Fairley, Kohl-Welles and Kline.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/22/08.

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce. The CPA includes prohibitions on anti-competitive behavior and restraints on trade. The CPA may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state.

In a suit for a CPA violation, a prevailing plaintiff is entitled to recover: (1) the actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at 10,000 dollars in superior court and 50,000 dollars in district court.

Treble damages are available to private parties, counties, municipalities, and all political subdivisions of the state.

If the state of Washington prevails on a suit alleging anti-trust violations under the CPA, the state is entitled to recover damages, costs of the suit, and reasonable attorney fees. Treble damages are not available.

Summary of Bill: In a suit for a CPA violation, the court has the discretion to award up to 50,000 dollars in damages for each CPA violation by the defendant to advance the interests of the CPA.

The 50,000 dollars in damages may be awarded to private parties and to the counties, municipalities, and political subdivisions of the state. The damages are also recoverable by the Attorney General in CPA suits brought on behalf of the state.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

If the state prevails on an anti-trust claim under the CPA, the state may recover up to 50,000 dollars in damages to advance the interests of the CPA if the trier of fact determines it to be just.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Consumer protection act (CPA) violations are a big problem. The Attorney General's (AG) Consumer Resource Centers handle 20,000 complaints every year. This bill gives the AG and the public better ability to enforce the CPA. The AG will have more resources if it will be able to collect the bigger damages allowed under this bill. Increasing the allowable damages is the best way to deter CPA violations. The current \$10,000 allowable damages are just a slap on the wrist; it can just be treated as a cost of doing business. This bill protects fair competition and is a step in the right direction. We need uniformity between superior and district court. The bigger problem is the Hangman Ridge case, which requires plaintiffs to prove public interest or likelihood of repetition; this is too onerous a burden.

CON: This proposal would put Washington out of the mainstream; this is significantly beyond what other states do. Current law provides a reasonable incentive to bring claims even if the actual damages are small. Attorney's fees are already included in the CPA. This bill removes the connection between the underlying harm and the exemplary damages; this is problematic because underlying damages could be de minimis, but the law would still permit \$50,000 in damages being awarded.

Persons Testifying: PRO: Blair Anundson, WashPIRG; Larry Shannon, Washington State Trial Lawyers Association.

CON: Cliff Webster, Liability Reform Coalition; Mel Sorensen, Washington Defense Trial Lawyers.